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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,001	02/20/2002	Yuji Sawada	0992-0127P	4536
2292	7590	05/13/2004	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			ALEJANDRO, RAYMOND	
			ART UNIT	PAPER NUMBER
			1745	

DATE MAILED: 05/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/069,001	SAWADA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Raymond Alejandro	1745	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 April 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4,5 and 7-29 is/are pending in the application.
- 4a) Of the above claim(s) 2, 4, 7, 10-13, 15, 17-24 and 28-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5,8,9,14,16 and 25-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

This document is submitted in reply to the amendment filed 04/05/04. The applicant has overcome the objections and the 35 USC 102 rejection. Refer to the foregoing amendment for specific details on applicant's rebuttal arguments. However, the claims (including newly added claims 25-27) are finally rejected over new art as seen below and for the reasons of record:

### ***Election/Restrictions***

1. Newly submitted claims 28-29 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: it is noted that claims 28-29 depend from non-elected claims 2 and 4 which were withdrawn from consideration. Thus, by association with a non-elected invention, claims 28-29 are considered to be distinct from the invention originally elected for prosecution.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 28-29 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

2. This application contains claims 2, 4, 7, 10-13, 15, 17-24 and 28-29 drawn to an invention nonelected with traverse in Paper No. 11/20/03. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

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***Claim Language Suggestion***

3. Claim 1: it is suggested to delete the language "such as" (in line 2) so as to have a better understanding of the claims. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1, 5, 8-9, 14, 16 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Japanese document JP 11-086808 (herein called "*the JP '808 document*") in view of the Japanese publication JP 09-283101 (hereinafter referred to as "*the JP '101 publication*").

The present application is directed to a laminate for sealing a battery electrolyte or electrode wherein the disclosed inventive concept comprises the specific laminate structure.

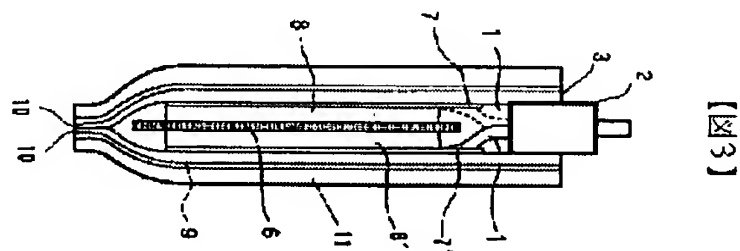
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With reference to claims 1, 14 and 16:

The JP'808 document discloses a sealing bag for nonaqueous electrolyte battery, the sealing bag seals the positive and negative electrodes and the electrolyte (Title/Abstract). *Thus, the layered sealing bag meets the requirement of being a seal film for sealing a battery component such as an electrolyte or an electrode.*

Examiner's note: as to the specific preamble reciting "for use as a seal film for sealing an electrolyte of a battery such as a secondary battery or as a protective film for protecting an electrode of a battery, it is pointed out that the preamble refers to intended use. That is, the claim is directed to a laminate per se and the foregoing preamble phrase is only a statement of ultimate intended utility.

It is disclosed that the sealing bag is formed with a material stuck together with plastic layers inserted with a metal layer such as aluminum foil and a metal deposition layer, a PET film is stuck thereto and a thermoplastic resin such as polyethylenene is also stuck thereto (Abstract/Solution). **Figure 3** below illustrates the specific layered structure of the sealing feature, particularly, the Al foil 9, the plastic layers 11 and the heat seal layers 10.



**TABLE 1** below shows the specific constitution of sealing bag including: the PET layer, an urethane adhesive, the Al foil, the acid-modified LDPE, and the heat seal layers Y and Z.

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【表 1】

封入袋のシート構成	
PET	(12 $\mu$ m)
ウレタン系接着剤	(5 $\mu$ m)
アルミ箔	(9 $\mu$ m)
酸変成LDPE	(20 $\mu$ m)
ヒートシール層Y	(30 $\mu$ m)
ヒートシール層Z	(30 $\mu$ m)

*With respect to the surface treated layer:* the JP'808 document also discloses that the sealing bag 3 preferably comprises a laminated material comprising a substrate having a metallic vapor deposition layer sandwiched between plastic layers 10 and 11 (SECTIONS 0010-0015). *Thus, the substrate itself having the metallic vapor deposition layer acts as the surface-treated layer over the substrate surface.* Furthermore, it is also disclosed that the plastic film 11 and the metallic foil layer 9 are adhered to each other by using adhesive, such as urethane, epoxy and polyester resins (SECTIONS 0010-0015). *Hence, the foregoing adhesive layer, to some extent, chemically treat the surface of the Al foil or the metallic layer.*

*With respect to the layer of an adhesive resin:* it is disclosed that the acid-modified LDPE is an acid-modified polyolefin being modified by a carboxylic acid (SECTIONS 0010-0015).

As to claim 5:

The JP'808 document discloses the metal layer is made of aluminum foil (ABSTRACT/SOLUTION).

On the matter of claims 8-9:

It is disclosed that resin composition used for a plastic layer is mainly made of acid-denatured polyethylene or acid-denatured polypropylene (ABSTRACT/SOLUTION). It is disclosed that the acid-modified LDPE is an acid-modified polyolefin being modified by a carboxylic acid (SECTIONS 0010-0015).

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The JP'808 document discloses a layered laminate made of a seal film according to the foregoing aspects. However, the JP'808 does not expressly disclose the specific chemically surface-treated layer.

As to claims 1, 25-27:

The JP'101 publication reveals a sealing bag using maleic acid modified polyolefine as a material for a seal part of a sealing bag, and providing a maleic acid modified polyolefine layer therein (ABSTRACT).

*Examiner's note: additionally, as to the method limitation, i.e. the specific chemical treatment materials, it is noted that a method limitation incorporated into a product claim does not patentable distinguish the product because what is given patentably consideration is the product itself and not the manner in which the product was made. Therefore, the patentability of a product is independent of how it was made. This is to address the limitations reciting the specific chemical treatment material/technique: even though the limitation "a surface-treated layer formed...by chemical or oxidative treatment of the metal" may impart, somehow, a different structure (the one formed by the specific surface-treated layer), it is noted that as long as the surface thereon is chemically or oxidatively treated, the present claims satisfy the intended invention of having a chemical-oxidative surface treated layer. Thus, the chemically/oxidatively surface treated layer is formed thereon regardless of the specific chemical treatment material or technique.*

In view of the above, it would have been obvious to one skilled in the art at the time the invention was made to use the specific chemically surface-treated layer of the JP'101 publication in the layered seal-forming laminate of the JP'808 document as the JP'101 publication discloses

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the use of a maleic acid modified polyolefine layer provides a bag with high reliability of sealing. *Thus, the JP '101 directly teaches the advantage of using the specific chemically surface-treated layer as instantly claimed. Moreover, it has been held that re-arrangement, reversal or duplication of parts is obvious. Succinctly stated, fact that a claimed feature is structurally re-arranged, reversed or duplicated is not sufficient by itself to patentably distinguish over an otherwise old feature unless there are new or unexpected results as it is a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed layered laminate was significant. In re Japikse 86 USPQ 70. In re Gazda 104 USPQ 400. In re Harza 124 USPQ 378.*

### ***Response to Arguments***

7. Applicant's arguments, see the amendment filed 04/05/04 for specific details, with respect to the rejection(s) of claim(s) 1, 5, 8-9, 14, 16 and 25-27 under the 35 USC 102 rejection statute have been fully considered and are persuasive. Therefore, the rejection has been overcome. However, upon further consideration, a new ground(s) of rejection is made as seen above. Accordingly, applicant's arguments with respect to foregoing claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond Alejandro whose telephone number is (571) 272-1282. The examiner can normally be reached on Monday-Thursday (8:00 am - 6:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Raymond Alejandro  
Examiner  
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A handwritten signature in black ink, appearing to read 'RAM', with a long, sweeping horizontal stroke underneath.